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Relating to the laws and regulations governing the recognition of agents, attorneys and other persons representing claimants before the Treasury Department and offices thereof; Department circular no. 230 (as revised to December 7, 1951); Circular 230 (as revised to December 7, 1951)

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U. S. TREASURY DEPARTMENT
OFFICE OF THE SECRETARY

DEPARTMENT CIRCULAR No. 230

(Revised December 7, 1951)

RELATING TO THE
LAWS AND REGULATIONS GOVERNING THE
RECOGNITION OF AGENTS, ATTORNEYS
AND OTHER PERSONS

REPRESENTING CLAIMANTS
BEFORE THE TREASURY DEPARTMENT
AND
OFFICES THEREOF



UNITED STATES
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LAWS AND REGULATIONS GOVERNING THE RECOGNITION OF AGENTS, ATTORNEYS, AND OTHER PERSONS REPRESENTING CLAIMANTS BEFORE THE TREASURY DEPARTMENT AND OFFICES THEREOF

DEPARTMENT CIRCULAR NO. 230 (AS REVISED TO DECEMBER 7, 1951)

PART 10—PRACTICE OF ATTORNEYS AND AGENTS BEFORE THE TREASURY DEPARTMENT

Sec.

- 10.1 Committee established.
- 10.2 Rules and regulations relating to practice.
- 10.3 Qualifications for enrollment.
- 10.4 Application for enrollment.
- 10.5 Customhouse brokers.
- 10.6 Roster of enrollees; enrollment cards.
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- 10.9 Substitution of attorneys or agents; revocation of authority.
- 10.10 Disreputable conduct.
- 10.11 Striking names from roll.
- 10.12 Application and effective date of regulations.
- 10.13 Withdrawal or amendment of regulations.

AUTHORITY: §§ 10.1 to 10.13, issued under section 3, 23 Stat. 258; 5 U. S. C. 261.

SOURCE: 10.1 to 10.13 appear at 12 F. R. 3656 except that amendments to particular sections are noted at the end thereof.

§ 10.1 *Committee established* — (a) *Committee on Practice.* A Committee on Practice is hereby created consisting of such number of members as shall be appointed by the Secretary of the Treasury. The Secretary shall designate a chairman of the Committee. The Secretary in his discretion may appoint a part-time member or members of the Committee, and, whenever in his judgment such action is necessary, the Secretary may appoint some person to serve temporarily as a substitute for a regular member of the Committee. The Com-

mittee shall have such powers to prescribe rules for its own government and procedure as are set forth elsewhere in the regulations in this part. The Committee shall meet at such times as it may designate or at the call of the chairman. Two members of the Committee shall constitute a quorum.

(b) *Duties of the Committee.* The Committee shall receive and act upon applications to be recognized as attorneys or agents before the Treasury Department; receive and act upon applications for reenrollment from attorneys or agents who have been disbarred; conduct hearings; make inquiries; and perform other duties as prescribed in this part.

(c) *Secretary of the Committee.* The Secretary of the Treasury may appoint a person to act as secretary of the Committee or designate a member of the Committee to act as secretary. The secretary of the Committee shall keep and maintain its records, shall have custody of all its papers, records, rolls, and files, and shall perform such other duties reasonably incident to his office as the Committee shall direct. If no secretary is appointed or designated, the duties herein enumerated shall devolve upon the chairman of the Committee, or upon such person or persons as he may designate.

(d) *Attorney for the Government.* The Secretary of the Treasury shall appoint an attorney not a member of the Committee as Attorney for the Government to prepare and present all formal statements of charges against enrolled attorneys or agents, to supervise the gathering of evidence in support of such

charges, including the taking of depositions, to represent the Government in all proceedings before the Committee, to represent the Government in all proceedings pursuant to § 10.7, and to perform other duties incident to his position.

§ 10.2 Rules and regulations relating to practice—(a) Eligibility to practice.

(1) No attorney or agent shall be eligible to practice before the Treasury Department unless such attorney or agent is enrolled in accordance with the regulations in this part or prior regulations, except that any individual may appear, without enrollment, on his own behalf or in behalf of a member of his immediate family if such appearance is without compensation; and a member of a partnership, an officer of a corporation, or an authorized regular employee of an individual, partnership, corporation, or estate, may likewise appear, without enrollment, in any matter relating to such individual, partnership, corporation, or estate pending before the Treasury Department if he presents adequate identification to the officials of the Department. Enrollment is not required for appearances by trustees, receivers, guardians, administrators, and executors on behalf of trusts, receiverships, guardianships, or estates of which such persons are the trustees, receivers, guardians, administrators, or executors, if adequate identification is presented to the officials of the Department. This rule also applies to an individual, a partnership, an estate or trust, or a corporation with respect to the liability of the individual, partnership, estate or trust, or corporation as a transferee of property of a taxpayer and to a fiduciary with respect to the liability of the fiduciary under section 518 (a), 48 Stat. 760; 31 U. S. C. 192. No enrolled person or other person authorized to appear before the Treasury Department without enrollment shall represent a claimant before the Treasury Department in any matter to which the enrollee, as officer or employee of the United States, gave personal consideration or as to the facts of which he gained knowledge while in the Government service.

(2) No former officer, clerk, or employee of the Treasury Department shall act as attorney or agent, or as the employee of an attorney or agent within 2 years after the termination of such Treasury employment, in any matter

pending in such Department during the period of his employment therein, unless he shall first obtain the written consent thereto of the Secretary of the Treasury or his duly authorized representative. This consent will not be granted unless it appears (i) that the applicant was not, during the period of 2 years immediately preceding the date of application, employed in the particular departmental or field section in which was pending the matter, to handle which consent is sought, provided that this requirement shall not apply to persons employed in an administrative capacity such as head of a unit, division, or section, or employed as a reviewer or conferee or in an advisory capacity; and (ii) that employment as an agent or attorney is not prohibited by section 5, 17 Stat. 202; 5 U. S. C. 99, or other law, or by the regulations of the Treasury Department. Such applicant shall be required to file a declaration to the effect that he gave no personal consideration to such matter and had no knowledge of the facts involved in such matter while he was employed in the Department and that he is not now associated with, and will not be associated with, any former employee who has gained knowledge of the case while employed by the Treasury Department, and that his employment is not prohibited by law, or by the regulations of the Treasury Department. The statements contained in such declaration shall not be sufficient if disproved by an examination of the files and records pertaining to the case. Applications for consent should be directed to the Committee on Practice on Form 901 and should state the former connection with the Department of the applicant and identify the matter in which the applicant desires to appear. The applicant shall be promptly advised as to his privilege to appear in the particular matter, and this notice shall be filed by him in the record of the case.

(3) Nor shall any enrolled person knowingly (i) assist a person who has been employed by a client to represent him before the Treasury Department in connection with any matter to which such person gave personal consideration or as to the facts of which such person gained personal knowledge while in the Government service, or (ii) accept assistance from any such person in connection with any such matter, or (iii) share fees with any such person in connection with any such matter.

(b) *Scope of practice before the Department.* Practice before the Treasury Department shall be deemed to comprehend all matters connected with the presentation of a client's interests to the Treasury Department, including the preparation and filing of necessary written documents, and correspondence with the Treasury Department relative to such interests. Unless otherwise stated the term "Treasury Department" as used in this paragraph and elsewhere in this part includes any division, branch, bureau, office, or unit of the Treasury Department, whether in Washington or in the field, and any officer or employee of any such division, branch, bureau, office, or unit.

(c) *Knowledge of client's omission.* Each enrolled attorney or agent who knows that a client has not complied with the law or has made an error in, or an omission from, any return, document, affidavit, or other paper, which the law requires such client to execute, shall advise his client promptly of the fact of such noncompliance, error, or omission.

(d) *Duty of enrollees concerning violations.* It shall be the duty of an enrolled attorney or agent, when requested by the Committee or the attorney for the Government, to give the Committee or the said attorney any information which he may have concerning violations of the regulations in this part or of the occurrence of any acts or omissions which would be grounds for suspension or disbarment, unless said information is privileged.

(e) *Use of fictitious names.* Every enrolled attorney or agent practicing as an individual shall use his legal name in the conduct of his legal, accounting, or other professional practice. The term "company," "associates," "accountants," "auditors," "engineers," or other plural forms suggesting a partnership, or language of similar import, used in connection with a name or title, or any fictitious title, or trade name, shall be used only by a bona fide partnership consisting of two or more members, and all stationery, listings, advertisements, and announcements of enrolled persons shall conform to the principles herein stated.

(f) *Rights and duties of agents.* An agent enrolled before the Treasury Department shall have the same rights, powers, and privileges and be subject to the same duties as an enrolled attorney: *Provided*, That an enrolled agent shall

not have the privilege of drafting or preparing any written instrument by which title to real or personal property may be conveyed or transferred for the purpose of affecting Federal taxes, nor shall such enrolled agent advise a client as to the legal sufficiency of such an instrument or its legal effect upon the Federal taxes of such client: *And provided further*, That nothing in the regulations in this part shall be construed as authorizing persons not members of the bar to practice law.

(g) *Certification of documents.* Every claim, affidavit, written argument, brief, or statement of fact, prepared or filed by an enrolled attorney or agent in any matter pending before the Treasury Department, shall have affixed thereto a statement signed by such attorney or agent showing whether he prepared such document and whether or not he knows of his own knowledge that the statements of fact contained therein are true.

(h) [Revoked.] [Reserved.]

(i) *Enrollees as notaries.* No enrolled attorney or agent as notary public shall take acknowledgments, administer oaths, certify papers, or perform any official act in connection with matters in which he is employed as counsel, attorney, or agent, or in which he may be in any way interested before the Treasury Department. Under the provisions of this paragraph an enrolled person who is a notary public is prohibited from taking any acknowledgment, oath, or certification as a notary public in connection with any tax return, protest, or other document which he has prepared or in the preparation of which he has assisted (26 Op. Atty. Gen. 236).

(j) *Unimpaired status required.* It shall be incumbent upon each enrolled person (1) who is authorized to practice as a certified public accountant or as a public accountant to maintain unimpaired his right to practice as a certified public accountant or public accountant; (2) who is admitted to practice before any court to maintain unimpaired his right to practice before such court; and (3) who is enrolled or admitted to practice before another department or agency of the Government to maintain unimpaired his standing before such department or agency.

(k) *Certain partnerships prohibited.* No enrolled person shall maintain a partnership for the practice of law, accountancy, or other related professional service with a person who is under disbar-

ment from practicing before the Treasury Department, or any other Government department or agency, or with an unenrolled person who is neither an attorney legally practicing law nor a certified public accountant or a public accountant legally practicing accountancy.

(l) *Practice by corporations prohibited.* No enrolled person shall be connected with an accounting corporation either as officer, employee, or stockholder; nor shall any enrolled person, while employed as an officer, employee, attorney, or agent of any corporation, practice before the Treasury Department on behalf of such corporation as the representative of the officers, employees, directors, stockholders or members, customers or clients, of such corporation, except as permitted by § 10.5. The term "corporation" as used in this paragraph and elsewhere in this part shall be deemed to include associations, joint stock companies, and insurance companies. Nothing contained herein shall prevent an enrolled person from being employed by agricultural cooperative associations, on a nonprofit basis and not subject to Federal income taxes, to represent before the Treasury Department the groups or units constituting membership of such associations: *Provided*, That individuals may not be so represented.

(m) *Clients of unenrolled persons.* No enrolled person shall represent before the Treasury Department clients of an unenrolled person who is neither an attorney nor an accountant regularly engaged in the practice of accountancy nor a customhouse broker, or who to the knowledge of the enrolled person solicits business, obtains clients, or otherwise conducts his practice in a manner forbidden under the regulations in this part to enrolled persons.

(n) *Assistance from unenrolled persons.* No enrolled person shall in any Treasury Department matter knowingly and directly or indirectly:

(1) Employ or accept assistance from any unenrolled person whose application for enrollment shall at any time have been denied for a cause involving moral turpitude, or from a person who has been disbarred from practice before any department or agency of the Government or before any court of record, or who is under suspension from practice before any such department, agency, or court, or who has been deprived of his certifi-

cate as a certified public accountant or public accountant, or whose name after the effective date hereof has been stricken from the roll of attorneys and agents authorized to represent claimants before the Treasury Department in the course of disbarment proceedings against him, or

(2) Accept employment as associate, correspondent, or sub-agent, from, or share fees with, any such person, or any person who is not an attorney or a public accountant regularly engaged in the practice of accountancy, or who is not a licensed customhouse broker.

(o) *Preparation of financial statements.* Each enrolled person shall exercise due diligence in preparing financial statements for clients and in certifying to the correctness of the same.

(p) *Diligence as to accuracy.* Each enrolled person shall exercise due diligence to ascertain the correctness of any information which he imparts to a client with reference to any Treasury Department matter, and no enrolled person shall withhold information relative to any such matter from a client who is entitled to the information.

(q) *Moneys received in trust.* Each enrolled person shall promptly pay over to the Government when due all sums received for the payment of any duty, tax, or other debt or obligation owing to the Government, and shall promptly account to clients for funds received for them from the Government, or received from a client in excess of the charges properly payable in respect of the client's business.

(r) *Endorsement of client's checks.* No enrolled person shall without authority of his client endorse or accept any Government draft, check, or warrant drawn to the order of such client.

(s) *Use of influence forbidden.* No enrolled person shall attempt to influence the action of any official or employee of the Treasury Department in any Treasury Department matter by the use of threats, false accusations, duress, or by the offer of any special inducement or promise of advantage, or by the bestowing of any gift or favor or other thing of value.

(t) *Production of records.* No enrolled person shall neglect or refuse to produce records or evidence in any matter before the Treasury Department upon proper and lawful demand by a duly authorized agent of the Department, unless the attorney or agent has

reasonable grounds to believe and does believe that the said demand is of doubtful legality; or shall otherwise interfere, or attempt to interfere, with any proper and lawful efforts by such Department or agent to procure such information.

(u) *Attempting to obtain information.* No enrolled person shall procure, or attempt to procure, directly or indirectly, from Government records or other Government sources information of any kind which is not made available by proper authority.

(v) *Solicitation and advertising, direct or indirect, prohibited.* No enrolled attorney or agent shall in any manner whatsoever solicit, directly or indirectly, or by implication, employment from persons not clients or friends in matters before the Treasury Department or in matters related thereto. Among other things the following shall be deemed to be prohibited by this paragraph:

(1) The publication of articles or the delivery of addresses on Federal tax questions by an enrolled person over the radio or elsewhere in connection with which the name of the firm of which he is a member, associate, or employee, or the address of the writer or speaker is given either by the writer, speaker, announcer, or publisher, provided that nothing herein shall be construed to prohibit the publication, by periodicals admitted to second-class mailing privileges, of such information concerning contributors of articles as is usually published in such periodicals.

(2) The mailing of circulars, letters, pamphlets, or other printed or written matter to persons not clients or friends of such enrolled person which contain no direct solicitation of employment but which do include the name and a description of the practice and address of such enrolled person.

(3) Advertising in one or more of the following forms: (i) Signs, printing, or other advertising matter, indicating previous connection with the Treasury Department; (ii) representation, orally, in writing, or in any other manner, of special influence with the officials or employees of the Treasury Department through acquaintance or otherwise; (iii) the use of any title or other description of the attorney or agent or his practice which tends to suggest some connection with the Treasury Department of the United States, and any title or description containing the words "United States"

shall be presumed to carry such suggestion, except that there is no objection to the use of the words "Enrolled to practice before the United States Treasury Department"; (iv) distribution of bulletins, circulars, pamphlets, or so-called "tax services," to persons who are not clients or friends of the attorney or agent containing decisions or rulings of the Treasury Department, the Tax Court of the United States, or courts on Federal tax matters, or comment thereon by the attorney or agent; (v) distribution to persons not clients or friends of the practitioner of circulars or pamphlets advertising any business, educational, or social institution, or organization, which circular or pamphlet contains a card or advertisement of the practice of such attorney or agent.

(4) The following kinds of advertising will not be deemed to constitute a violation of this paragraph:

(i) Letterheads, professional cards, and the customary professional insertions in professional, telephone, and city directories, or in newspapers, trade or professional journals, or other publications admitted to second-class mailing privileges, provided they set forth only the name and address of the attorney or agent or the name of the firm of which he is a member or with which he is associated, a brief description of the nature of his practice, to wit, whether he practices as an attorney or accountant, and, if desired, any field of practice or service in which such attorney or agent may specialize;

(ii) The distribution by former officers or employees of the Government of cards briefly stating the fact of their former official status and announcing their new association: *Provided*, The cards are addressed only to personal or business acquaintances: *And provided further*, That such cards are distributed only once and within a reasonable time after severance of official connection with the Government and within 30 days after the formation of a new association.

(w) *Preparation of documents by enrollees.* Each enrolled person shall exercise due diligence in preparing or assisting in the preparation of, approving, and filing returns, documents, affidavits, and other papers relating to Treasury Department matters, and in otherwise representing clients before the Treasury Department; and no enrolled person shall unreasonably delay the prompt disposi-

tion of matters before the Treasury Department by neglecting to answer correspondence, by unreasonably delaying the filing of closing agreements, by filing frivolous claims for refunds, or otherwise.

(x) *Duty to request name to be stricken upon accepting employment with the United States.* It shall be the duty of every enrolled person who becomes a judge of any court of record or an officer or employee (1) of the United States, (2) of any corporation owned wholly by the United States, (3) of the District of Columbia, or (4) of any State or subdivision thereof whose duties disclose facts or information applicable to Federal tax matters, to request the Committee on Practice to place his name on the inactive list of Treasury Department practitioners during the period of such incumbency. Any person who on becoming an officer or employee of the Treasury Department requested that his name be stricken from the roll and surrendered his enrollment card to the Committee for cancellation and whose employment with the Department has been or shall be terminated in good standing shall be entitled upon his written request to have his name restored to the roll and his enrollment card returned to him.

(y) *Fees; agreements.* (1) No enrolled person shall exact from his client a manifestly unreasonable fee, whether contingent or otherwise, in any matter before the Treasury Department. The reasonableness of a fee in any case is within limits a matter of judgment and depends upon all the facts and circumstances thereof, including the complexity and difficulty of the case, the amount of time and labor required for its proper preparation and presentation, the amount involved, and the professional standing and experience of the attorney or agent.

(2) A wholly contingent fee agreement shall not be entered into with a client by an enrolled person unless the financial status of the client is such that he would otherwise be unable to obtain the services of an attorney or agent. Partially contingent fee agreements are permissible where provision is made for the payment of a minimum fee, substantial in relation to the possible maximum fee, which minimum fee is to be paid and retained irrespective of the outcome of the proceeding. Such minimum fee need not be paid in advance, if provision for its payment is made irrespective of the outcome of the case. The payment of or agreement to pay a nominal

minimum fee will not satisfy the requirements of this subparagraph.

(3) Whenever an enrolled attorney or agent shall enter into a contract to represent a client before the Treasury Department on a wholly or partially contingent basis, he shall file with the Committee a signed statement to that effect, containing the terms of the contract as they relate to compensation.

(4) When a power of attorney is filed with the Treasury Department it shall be the duty of the attorney or agent filing the same to file therewith a statement as follows:

(Date and place) _____
 This is to certify that I (have) (have not) entered into a contingent or partially contingent fee agreement for the representation of _____ be-
 (name of client, principal, or taxpayer)
 fore the Treasury Department in the matter of _____
 (income, estate, gift or other taxes, or other _____ under the terms of a power of matter)
 attorney filed with the Treasury Department on _____, 19____, and (in case a contingent or partially contingent fee agreement has been made) that a report of such fee agreement (has) (has not) been made to the Committee on Practice.

(Signature of attorney or agent)

This requirement shall not be applicable to powers of attorney wherein the authority granted is limited to the filing of tax or information returns.

(Secs. 3, 23 Stat. 258; 5 U. S. C. 261; 15 F. R. 6548)

(z) *Duty to observe canons of ethics.* Each enrolled person shall conduct his practice in an ethical and professional manner and it shall be the duty of each enrolled attorney to observe the canons of ethics as adopted by the American Bar Association and of each enrolled agent to observe the ethical standards of the accounting profession. Among other forms of unethical and unprofessional conduct the following will be deemed to constitute such conduct: The use of intemperate and abusive language, the making of false accusations or statements knowing them to be false, or the circulation of malicious and libelous matter in connection with Treasury practice.

§ 10.3 *Qualifications for enrollment.*

(a) (1) Persons of the following classes who are found, upon consideration of their applications, to possess the qualifications required by the regulations in this part may be admitted to practice before the Treasury Department as attorneys or agents respectively:

(i) Attorneys at law who have been admitted to practice before the courts of any State or Territory, or the District of Columbia, and who are lawfully engaged in the active practice of their profession.

(ii) Certified public accountants who have duly qualified to practice as certified public accountants in their own names, under the laws and regulations of any State or Territory, or the District of Columbia, and who are lawfully engaged in active practice as certified public accountants.

(2) Applicants who are employed by corporations on a full-time basis and who do not maintain offices apart from such employment with their services available to the general public will not be considered to be in active practice within the meaning of the term as used above.

(3) Applicants for enrollment to practice before the Treasury Department are required by statute to "show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases" (5 U. S. C. 261). The burden is upon applicants to establish clearly their right to enrollment by showing that they possess

(i) a good character and reputation, (ii) an adequate education, and (iii) a knowledge of the laws and regulations relating to tax matters and other subjects which they expect to handle before the Department and of the rules and regulations governing practice before the Department.

(4) Good character and good reputation are not identical requirements. The former is determined by the applicant's actual qualities; the latter depends upon the opinion entertained of the applicant by those who have had the opportunity of knowing him in the community in which he resides or in which he practices his profession. It follows that evidence of any act or omission which tends to establish lack of integrity or untrustworthiness or other qualities reprehensible in a professional man, is material as bearing upon the character of the applicant, notwithstanding there is clear proof that his reputation is good. An applicant must furnish as references the names and addresses of at least six persons who are acquainted with his reputation and

with whom the applicant has come in contact in his profession or business.

(b) (1) Among the causes sufficient to justify denial of an application for enrollment are: Any conduct, or practices, or proposed practices, which would constitute a violation of any of the provisions of the regulations in this part if the applicant were enrolled or any other conduct which would be a ground for suspension or disbarment under the applicable law or laws; any conduct which would be deemed grossly unfair in commercial transactions by accepted standards; or a bad reputation imputing to an applicant conduct of a criminal, dishonest, or unethical kind.

(2) The Committee on Practice will endeavor to ascertain all the facts deemed necessary by it to pass upon any application without expense or undue inconvenience to the applicant. In the event, however, that the Committee is not satisfied with the information received, it may require the applicant to appear in person before the Committee or before some person or persons designated by it for the purpose of undergoing additional written or oral examination as to his fitness for enrollment. The Committee may grant a hearing on an application at the applicant's request.

(c) Application for enrollment may be denied in any case in which it appears that the applicant has terminated his employment with the Treasury Department in violation of an obligation assumed as a condition of such employment to remain in the service of the Department for a specified period or for a reasonable time.

(d) Only citizens of the United States over the age of 21 years are eligible for enrollment. A person who is unable for any reason to take the oath of allegiance, and to support the Constitution of the United States, as required of persons prosecuting claims against the United States by Title 31, section 204, United States Code cannot be enrolled.

(e) Corporations and partnerships are ineligible for enrollment.

(f) Officers and employees of any State, or subdivision thereof, whose duties require them to pass upon, investigate, or deal with tax matters of such State or subdivision, shall be ineligible for enrollment, provided such employment may disclose facts or information applicable to Federal tax matters.

(g) A judge of a court of record shall be ineligible for enrollment except that ineligibility on this account shall not attach to any judge of any court of any state or territory (including any subdivision thereof) the laws of which permit him to practice in cases in which he does not act as judge.

(h) All persons to whom 18 U. S. C. 281 applies, all persons regularly employed by corporations owned wholly by the United States, and all persons regularly employed by the District of Columbia shall be ineligible for enrollment. See also 18 U. S. C. Ch. 15.

(Sec. 3, 23 Stat. 258; 5 U. S. C. 261. Interprets or applies sec. 1, 62 Stat. 697, as amended by sec. 6, 63 Stat. 90; 18 U. S. C. 281. 15 F. R. 6548.)

(i) The qualifications for enrollment stated in paragraph (a) (1) (i) and (ii) of this section are prerequisites for general enrollment for practice before the Treasury Department.

(j) *Special enrollment.* However, special enrollment for the presentation of matters before a particular bureau or division may be effected in the following manner. An applicant for such special enrollment shall present his qualifications to the Committee. The Committee shall prescribe an examination for such applicant. If the Committee is satisfied that the applicant is possessed of the qualifications necessary to enable him to render valuable services to claimants and other persons before the particular bureau or division before which he is seeking authorization to practice, it shall issue to the applicant an appropriate special enrollment card.*

(k) *Authority for a particular matter.* Moreover, authority for the presentation of a particular matter before the Treasury Department may be effected in the following manner. An applicant for such authority shall present his qualifications to the Committee. If the Committee is satisfied that the applicant is possessed of the qualifications necessary to enable him to render valuable services to his principal in the presentation of the particular matter before the Treasury Department, it shall issue to the applicant an appropriate letter of

authority. Such a letter of authority shall not be necessary, except in the case of matters before the Bureau of Internal Revenue, if the officer or employee of the bureau or division before whom appearance is made is satisfied that the person appearing is not under orders of suspension or disbarment from the Treasury Department and is so clearly qualified that application to the Committee would be a useless formality.

Nothing in paragraphs (j) and (k) shall authorize any procedure to permit a person to act as a customhouse broker without compliance with the requirements of Part 11 of this subtitle, nor limit the rights granted by such Part 11 of this subtitle to customhouse brokers to represent their clients before the Treasury Department.

§ 10.4 *Application for enrollment.*

Applicants for enrollment shall submit to the Committee an application in duplicate, properly executed on Form 23. Applications in any other form may not be considered. Members of the bar of an American court of record will apply for enrollment as attorneys; all other applicants will apply for enrollment as agents. All applications for enrollment must be individual. While members of a partnership should apply as individuals and not in the partnership name, an enrolled attorney or agent may represent clients before the Treasury Department in the name of the partnership of which he is a member or with which he is otherwise regularly connected. In case all of the members of a partnership are not enrolled, then the enrolled attorney or agent shall be responsible for any acts or omissions of the unenrolled partner or partners which are in violation of law or of the provisions of the regulations in this part, to the same extent as though the offending partner himself were enrolled.

§ 10.5 *Customhouse brokers.* Section 641 of the Tariff Act of 1930 (46 Stat. 759; 19 U. S. C. 1641), as amended, provides in part that the Secretary of the Treasury may prescribe rules and regulations governing the licensing as customhouse brokers of citizens of the United States of good moral character, and of corporations, associations, and partnerships. The Department's regulations pursuant thereto are published in Part 11 of this subtitle. A customhouse broker so licensed requires no further enrollment under the regulations in this part for the

*Standards and Procedures relating to Former Officers and Employees—See page 16.

transaction, within the customs districts in which he is licensed, of any business relating specifically to the importation or exportation of merchandise under customs or internal-revenue laws. He is also entitled, without further license or enrollment, to represent claimants or other persons before the Treasury Department in Washington in any matter in which he acted as a customhouse broker in any district in which he is licensed. When serving in such capacity, a licensed customhouse broker shall, in addition to being subject to the provisions of section 641 of the Tariff Act of 1930, as amended, and the rules and regulations thereunder, be subject also to all the provisions of the laws and regulations set forth in this part, as revised from time to time, and shall be responsible as specified in § 11.7 (d) of this subtitle for violation of any such laws or regulations committed by his or its officers, employees, or authorized attorneys or agents, in connection with the prosecution on behalf of the principal of any business before the Treasury Department in Washington.

§ 10.6 Roster of enrollees; enrollment cards—(a) *Roster of attorneys and agents.* A roster of all attorneys and agents who make application for enrollment or who are enrolled, or whose applications have been denied, or who have been suspended or disbarred, will be kept in the office of the Committee on Practice. All bureaus, offices, and divisions of the Treasury Department subject to the exceptions in § 10.5 in the case of the Bureau of Customs, are prohibited from recognizing or dealing with any unenrolled attorney or agent as the representative of any person having a claim pending before the Department: *Provided*, That the Committee on Practice may grant, pending action upon an application, temporary recognition to an applicant not required to take an examination in connection with his application: *And provided further*, That an unenrolled person who has not been disbarred or suspended from practice before the Treasury Department may be permitted to make initial appearance in a particular case. Such permission shall in no case authorize an unenrolled person to appear before the Treasury Department in Washington, D. C., or to represent a claimant in any formal hearing. It shall be the duty of the Government official before whom such person appears to notify him that if he wishes to appear

further in the case, or in any formal hearing, or before the Treasury Department in Washington, it will be necessary to file an application for enrollment.

(b) *Information as to enrollment.* The Committee will furnish upon request information as to whether any individual is enrolled. Other information will be made available to the various departments and agencies of the Government and to any person entitled to receive the same in accordance with the rules and regulations of the Treasury Department, and, except as prohibited by law, access to the files and records of the Committee will be granted to the Tax Court of the United States and its representatives.

(c) *Enrollment cards.* The Committee on Practice shall issue an enrollment card to every attorney or agent upon his enrollment. Unless advised to the contrary by the Committee on Practice, any officer of the Treasury Department may consider the holder of such an enrollment card as duly authorized to practice before the Department.

(d) *Expiration and renewal of enrollment cards.* All enrollment cards which shall have been issued to persons enrolled to practice before the Treasury Department prior to January 1, 1952 shall be void after March 31, 1952. An enrollee holding a void card shall promptly surrender it to the Committee on Practice. Application for issuance of a renewal card may be made at any time between January 1, 1952, and June 30, 1952. An application for renewal shall be filed with the Committee on Form 23A. The form will call upon the applicant to state whether he made an income tax return for each year since the date of his enrollment, with what collector the last return was filed, and the reasons for not filing any such return; and whether the applicant has been cited to appear before any professional disciplinary body or convicted of a crime other than minor traffic violation since the date of his enrollment, and, if so, the details. Copies of Form 23A will be available at the office of the Committee on Practice and at the offices of all collectors of internal revenue, of all internal revenue agents in charge and of all special agents in charge. The Committee will issue a new enrollment card if a timely application is made and if the Committee is satisfied that the applicant is eligible to retain enrollment in accordance with 5 U. S. C. 261 and the regulations in this part. The reporting

requirements of this paragraph have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

(e) *Period of enrollment card.* Every enrollment card issued after January 1, 1952 (including enrollment cards issued pursuant to paragraph (d) of this section) shall by its terms become void five years after its date of issue, but it shall be renewable pursuant to procedures of the character prescribed by paragraph (d) of this section.

§ 10.7 *Proceedings for disbarment, suspension, and reinstatement—(a) Proceedings for suspension and disbarment.* If an officer or employee of the Treasury Department has reason to believe that an enrolled attorney or agent has violated any provision of the laws or regulations governing practice before the Treasury Department, or if a complaint concerning any enrolled attorney or agent is made to any such officer or employee, he shall promptly make a written report thereof to the attorney for the Government. If any other person has information of such violations, he may also make written report thereof to the said attorney. The attorney and the Committee will treat as strictly confidential the identity of the informant in any case in which the informant is other than an officer or employee of the Treasury Department, unless the informant in giving his information states that his identity and connection therewith are not confidential.

(b) *Rules of procedure.* The Attorney for the Government may, either on the basis of such information or upon his own motion where he has cause to believe that any enrolled attorney or agent has violated any provision of the laws or regulations governing practice before the Treasury Department, institute proceedings for suspension or disbarment against any enrolled attorney or agent, hereinafter called the respondent in this paragraph, by filing with the Committee a statement of charges signed by the Attorney for the Government. Subject to the provisions of the Administrative Procedure Act (60 Stat. 237), such proceedings shall be governed by the following rules:

(1) *Opportunity to avoid proceeding.* The Attorney for the Government shall, before a proceeding is instituted, give to the respondent notice in writing that:

(i) Transmits a copy of the proposed statement of charges, or a specification of the substance thereof;

(ii) Cites sections 5 (b) and 9 (b) of the Administrative Procedure Act;

(iii) Calls upon the respondent to show cause why the proceeding should not be instituted;

(iv) Informs the respondent that the notice affords him opportunity to make submissions and demonstrations of the character contemplated by the cited statutory provisions;

(v) Invites any negotiation that the respondent deems it desirable to enter into; and

(vi) Specifies a reasonable time for response to such notice: *Provided*, That, if prior to institution of the proceeding, the Attorney for the Government determines that the case is one in which such notice would be improper and unnecessary, he shall file his findings and his reasons therefor in the record, and such proceeding may be instituted without first giving notice.

(2) *Service—(i) Service of notice and statement of charges.* Notice of a proceeding for suspension or disbarment, signed by the Secretary or a member of the Committee, shall be served upon the respondent in the following manner:

(a) By delivery to the respondent personally, or

(b) By registered mail, with demand for a return card signed by the respondent: *Provided*, That, if an enrolled attorney or agent shall have signed and filed with the Committee on Practice his written consent to be served in some other manner it shall be sufficient if service is made in that manner. Where the service is by registered mail, the receipt of the return card duly signed shall be satisfactory evidence of service. The notice shall give the place and time within which the respondent shall file his answer, which time shall be not less than 20 days from the date of service of the notice, and shall contain or be accompanied by a statement of charges, which statement shall be signed by the Attorney for the Government.

(ii) *Service of papers other than notice and statement of charges.* Papers other than the original notice and statement of charges shall be served on the respondent as follows:

(a) By delivering the same to the respondent personally, or by registered mail; or

(b) By leaving them at his office with his clerk or with a person in charge thereof; or

(c) By depositing them in a United States post office or post office box, enclosed in a sealed envelope, plainly addressed to such respondent at the address under which he is enrolled or at his last address known to the Committee.

(d) When the respondent is represented by attorney, by service upon the attorney in the same manner as provided in subdivisions (a), (b) and (c) of this subdivision for service on the respondent.

(3) *Examiner.* There shall preside at the reception of the evidence an examiner, appointed as provided in the Administrative Procedure Act: *Provided, however,* That until examiners are appointed as provided in said act (but in no case initiated after June 10, 1947), the Committee shall act as examiner, and its action shall be taken by majority vote.

(4) *Filing of papers.* Whenever under this paragraph the filing of a paper in a proceeding is required or permitted, and the place of filing is not specified either by rule of the examiner in the particular proceeding or pursuant to this paragraph, the paper shall be filed with the Committee on Practice, Treasury Department, Washington, D. C.

(5) *Extension of time.* In any case in which the time for filing, pleading, making a submittal, or making an appeal, shall have expired, or shall be about to expire, to the prejudice of a party, the examiner shall have the power in his discretion and upon appropriate application and showing by the party prejudiced, to extend the time, as justice may be deemed to require.

(6) *Negotiation.* At any time prior to hearing by the examiner, the Attorney for the Government is authorized, in his sound discretion, to negotiate with the respondent for the purposes contemplated by sections 5 (b) and 9 (b) of the Administrative Procedure Act. The parties may at any time during the hearing limit the issues by stipulation. Any stipulations resulting from such negotiation shall be entered in the record.

(7) *Resignation to avoid disbarment.* If pursuant to negotiation (or otherwise) the respondent resigns to avoid possible institution of disbarment proceedings, or to avoid possible disbarment or suspension in a pending proceeding, the Committee may, upon motion of the Attorney for the Government, accept the

resignation. If the Committee overrules the motion it shall enter a formal order which shall recite the findings of fact and conclusions of the Committee and which shall be made of record in the proceeding, if any, against the respondent before the examiner.

(8) *Statement of charges.* The statement of charges shall give a plain and concise description of the facts which it is claimed constitute grounds for suspension or disbarment, without a detailed description of such facts. A statement of charges which fairly informs the respondent of the charges against him so that he is able to prepare his defense shall be deemed sufficient. Different means by which a purpose may have been accomplished or different intents with which acts may have been committed may be alleged in the statement of charges in a single count in the alternative.

(9) *Bill of particulars.* If, in order to prepare his defense, the respondent desires additional information as to the time and place of the alleged misconduct, or the means by which it was committed, or any other more specific information concerning the alleged misconduct, he may present a motion in writing to the examiner asking that the statement of charges be made more specific, setting forth in such motion in specific manner in what respect the statement of charges leaves him in doubt and describing the particular language of the statement of charges as to which additional information is needed. If in the opinion of the examiner such information is reasonably necessary to enable the respondent to prepare his defense, the examiner shall direct the Attorney for the Government to furnish the respondent with an amended statement of charges giving the needed information.

(10) *Answer.* The respondent's answer shall be filed in writing within the time specified in the original notice unless on application the time is extended pursuant to subparagraph (5) of this paragraph. The answer shall be made under oath before a notary public or other officer authorized to administer oaths and shall be filed in duplicate with the Committee on Practice.

(11) *Content of answer.* In his answer the respondent should specifically admit or deny every material allegation of fact in the statement of charges. Every allegation in the statement of charges

not denied shall be deemed admitted, unless the respondent shall state in his answer that he has no knowledge thereof sufficient to form a belief, which statement shall be considered a denial. In answer to a statement of charges, no enrolled person shall deny a material allegation of fact which he knows to be true, or state in such answer that he is without sufficient information to form a belief when in fact he possesses such information.

(12) *Affirmative defense.* In his answer the respondent may also state affirmatively special matters of defense, and shall not give in evidence any matters in avoidance or of defense, consistent with the truth of the allegations of the statement of charges, unless in his answer he states such matters specifically.

(13) *Complaining witness.* The Attorney for the Government may in his discretion furnish a complaining witness with a copy of the answer if in his opinion such action will aid in ascertaining the truth or falsity of the charges. The term "complaining witness" for the purposes of this provision shall include any officer or employee of the Treasury Department or any enrolled attorney or agent who may have reported the alleged misconduct to the Attorney for the Government, or any other person upon whose information the Attorney for the Government has instituted the proceedings.

(14) *Reply to answer.* If the answer contains affirmative matter in avoidance, consistent with the truth of the material allegations in the statement of charges, a reply by the Attorney for the Government admitting or denying the new matter set forth in the answer shall be filed and served upon the respondent.

(15) *Supplemental charges.* If it appears that a denial of a material allegation of fact in the statement of charges, or a statement that the respondent has no knowledge sufficient to form a belief, was made in bad faith in the answer; or that the respondent has knowingly introduced false testimony during proceedings against him for suspension or disbarment, the Attorney for the Government may thereupon file supplemental charges, which charges may be tried with the other charges in the case, provided the respondent shall be given due notice thereof and afforded an op-

portunity for preparing a defense thereto.

(16) *Sufficiency of the pleadings.* The examiner shall have authority to pass upon the sufficiency of the statement of charges, the answer, and all other pleadings. The parties may be heard upon the sufficiency of any pleadings whenever in the opinion of the Examiner a hearing thereon is necessary or desirable.

(17) *Immaterial mistakes.* The Examiner shall disregard an immaterial misnomer of a third person, an immaterial mistake in the description of any person, thing, or place or the ownership of any property, a failure to prove immaterial allegations in the description of the respondent's conduct, or any other immaterial mistake in the pleadings.

(18) *Hearings.* Subject to this paragraph the examiner may determine the time, place, and manner in which hearings shall be conducted; the form in which evidence shall be received, and may adopt rules of procedure and modify the same from time to time as occasion requires for the orderly disposition of suspension, disbarment, and reinstatement cases. Written notice of the time and place of all hearings shall be given the respondent in the manner provided in this paragraph for the service of papers. No hearing shall be held in less than 10 days from the date of service on the respondent of the notice of such hearing, except that the Examiner may postpone or adjourn hearings when necessary or desirable, on notice to the parties.

(19) *Testimony.* Unless the examiner shall otherwise direct, the testimony of witnesses at all hearings will be taken under oath and stenographically recorded and transcribed.

(20) *Depositions.* Depositions for use at a hearing may, with the written approval of the examiner, be taken by either the Attorney for the Government or the respondent, or their duly authorized representatives, upon oral or written interrogatories, before any officer duly authorized to administer an oath for general purposes, or an officer of the Internal Revenue Bureau authorized to administer an oath in internal revenue matters, upon not less than 10 days' written notice to the other party. Such notice shall state the names of the witnesses, and the time and place where such depositions are to be taken: *Provided*, That when depositions are taken as aforesaid, if

both parties are present or represented at the time and place specified for the taking of the depositions, either party may, after the examination of the witnesses produced under the order of the Examiner, be entitled to produce and examine other witnesses; but in such case one day's notice must be given to the other party or his duly authorized representative there present, unless such notice is waived: *And provided further*, That the parties or their duly authorized representatives may agree in writing upon a time when and place at which such depositions are to be taken, without formal notice. When a deposition is taken upon written interrogatories, any cross-examination shall be upon written interrogatories. Copies of such written interrogatories shall be served with the notice, and copies of any written cross-interrogatories shall be mailed or delivered to the opposing party or his duly authorized representative at least 5 days before the time of taking the depositions.

(21) *Documents*. Whenever any book, document or paper is introduced as an exhibit in a proceeding, the examiner may authorize, upon such conditions as he may deem proper, the withdrawal of such exhibit upon the request of the Attorney for the Government, or of the respondent or his attorney.

(22) *Proof; partial*. If the examiner finds that a part of the charges in the statement of charges is not sufficiently proved but that the residue thereof is so proved, he may base his findings on any facts established by the evidence which are grounds for suspension or disbarment and which are substantially charged by the said residue of the statement of charges.

(23) *Proof; variance*. In the case of a variance between the allegations in the statement of charges and the evidence, the examiner shall have power to base his findings on any facts established by the evidence which are grounds for suspension or disbarment, and to order the amendment of the statement of charges to conform to the evidence: *Provided*, That the respondent has had or is given reasonable opportunity to present his defense to such amended charges, with such postponements of the hearing as may be reasonably necessary to permit the respondent to present such defense.

(24) *Submittals*. After the reception of evidence has been concluded, the Examiner shall by rule afford the parties

a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. In the event that depositions are introduced on behalf of the Government at the hearing or in the event that oral testimony in support of the charges is produced by the Government at the hearing, the Attorney for the Government, as soon as possible after the hearing, shall prepare and file with the examiner proposed findings of fact based upon all the evidence in the case.

(25) *Exceptions to proposed findings*. Upon receipt of proposed findings and conclusions submitted by a party pursuant to subparagraph (24) of this paragraph, the Examiner shall forward to the other parties in the case or their attorneys a copy thereof together with a copy of the transcript of such oral testimony and depositions as may have been introduced. Such parties shall have not less than 10 days after receipt of such papers in which to submit in writing to the Examiner their exceptions, if any, to such proposed findings and conclusions. Neither such parties nor their attorneys shall have the right to receive any copies of exhibits introduced at the hearing or at the taking of the depositions. Such parties or their attorneys, however, shall have the right to examine all exhibits. Upon receipt of such exceptions, or after the time for filing such exceptions has expired if no such exceptions are filed the Examiner shall make his findings and conclusions as required by subparagraph (26) of this paragraph.

(26) *Decision by the examiner*. After the parties rest, the examiner shall make his decision in the case, which decision shall include (i) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record and (ii) a recommended order of suspension or disbarment or his order to dismiss the charges, as the case may require. In making his findings and conclusions as to the truth of any charges which are duly put in issue by the papers in any case and upon which a hearing is had, the examiner shall be guided by the preponderance of reliable, probative, and substantial evidence. If at any hearing upon issues of fact raised by the papers in the case the respondent fails to put in any evidence, the examiner may base his findings upon the evidence submitted by the attorney for the Government.

(27) *Effect of initial decision.* If the decision of the examiner does not contemplate the suspension or disbarment of the respondent, such initial decision in the absence of an appeal pursuant to subparagraph (28) of this paragraph shall without further proceedings become the decision of the Secretary of the Treasury.

(28) *Appeal.* Any party adversely affected or aggrieved, within 30 days after the decision is filed with the Committee, has the right to appeal from such initial decision of the Examiner by filing notice of appeal and to submit exceptions to the decision and supporting reasons therefor, which submittals shall be included in the record of the case. Upon the expiration of said period, the entire record shall be transmitted to the Secretary of the Treasury.

(29) *Submittals on recommended decision.* If the recommended decision of the Examiner contemplates the suspension or disbarment of the respondent, any party has the right, within 30 days after the decision is filed with the Committee, to submit exceptions to such recommended decision and supporting reasons therefor, which submittals shall be included in the record of the case. Upon the expiration of said period, the entire record shall be transmitted to the Secretary of the Treasury.

(30) *Decision by Secretary of the Treasury.* The Secretary of the Treasury will make the agency decision in each case in which an appeal has been taken from the initial decision of the Examiner as provided in subparagraph (28) of this paragraph and in each case in which the decision of the Examiner contemplates the suspension or disbarment of the respondent. In making such decision, the Secretary of the Treasury, pursuant to the provisions of the Administrative Procedure Act, will review the whole record or such portions thereof as may be cited by any party to permit limiting of the issues.

(31) *Notice of decisions.* Each decision (initial, recommended, or agency) shall promptly be filed in the record, and the Committee shall thereupon give notice thereof to the parties in the manner prescribed for the service of papers.

(32) *Notice of suspension or disbarment.* Upon issuance of an order of suspension or disbarment of an attorney or agent by the Secretary of the Treasury notice thereof shall be given by the Com-

mittee to the heads of all interested bureaus, offices, and divisions of the Treasury Department and to other interested departments and agencies of the Government in such manner as the Committee may determine. Such person will not thereafter be recognized during the period of suspension or disbarment as an attorney or agent in any matter before the Treasury Department. Notice in such manner as the Committee may determine may be given to the proper authorities in the State from which an enrolled attorney, certified public accountant, or public accountant derives his license to practice in the event that such attorney, certified public accountant, or public accountant is suspended or disbarred.

(33) *Reopening.* Any attorney or agent who has been suspended or disbarred may make written application to the Committee to have the order of suspension or disbarment vacated or modified upon the ground (i) of newly discovered evidence, or (ii) that important evidence is now available which the applicant was unable to produce at the original hearing by the exercise of due diligence. Every application for reinstatement shall be filed with the Committee in duplicate. Such application must set forth specifically the precise character of the evidence to be relied upon in its support and shall state the reasons why the applicant was unable to produce it when the original charges were heard. If the Examiner after due consideration of the application shall deem it sufficiently meritorious to warrant a hearing, he shall so advise the Committee, who shall set a time and place for such hearing and give due notice thereof to the applicant. Upon the conclusion of the hearing the Committee shall transmit the recommended decision of the Examiner to the Secretary of the Treasury for his approval or disapproval. In the event that the Secretary shall issue an order vacating or modifying the prior order of suspension or disbarment, notice thereof shall be given by the Committee to all those to whom notice of the original order of suspension or disbarment was sent. In all cases not covered by the foregoing provisions, a disbarred attorney or agent who desires to be restored to the roll must file a new application for enrollment and otherwise comply with the requirements of § 10.3.

(34) *Saving provision.* The regulations governing suspension, disbarment

and reinstatement that were in force and effect March 31, 1947, are referred to in this subparagraph as the old rules. This paragraph as amended effective April 1, 1947, is referred to in this subparagraph as the new rules. The old rules shall continue to govern any proceeding that was instituted prior to March 31, 1947: *Provided, however*, That if in the course of the proceeding there is taken any action that is authorized by the old rules but that is not authorized by the new rules, said action shall not constitute grounds for disturbing any order thereafter made in the proceeding: (i) Unless it is shown that the action was in derogation of substantive rights, and not merely procedural rights; and (ii) unless upon occurrence of the action the respondent made timely objection supported by his reasons, and the objection was overruled: *Provided further*, That adherence may be had to the new rules pursuant to stipulation of the parties.

§ 10.8 *Authority to prosecute claims.* A power of attorney from the principal in proper form may be required of enrolled attorneys or agents in any case by heads of bureaus, offices, and divisions. In the prosecution of claims before the Bureau of Internal Revenue, involving the assertion of demands for payment of money by the United States, proper powers of attorney shall always be filed before an attorney or agent is recognized.

§ 10.9 *Substitution of attorneys or agents; revocation of authority—(a) Substitution of attorneys or agents.* Where the power of attorney under which an enrolled attorney or agent is acting expressly confers the power of substitution, such attorney or agent may, by a duly executed instrument, substitute another enrolled attorney or agent in his stead: *Provided*, That such other attorney or agent will be recognized as such only after due notice in writing has been given the head of the bureau, office, unit, or division before which the matter is pending: *And provided further*, That where the enrolled attorney or agent designated in the power of attorney, with power of substitution, has himself by reason of his suspension or disbarment or his subsequent entry into Government service become ineligible further to represent before the Treasury Department the client who executed the power, the Treasury Department shall be under no obligation to recognize any substitute

power of attorney executed at any time by such attorney or agent, authorizing some other enrolled attorney or agent to appear before the Department upon behalf of such client, and it will be necessary for such client to retain a new attorney or agent.

(b) *Conflicting powers of attorney.* Where there is a contest between members of a dissolved firm or between two or more attorneys or agents, acting under the same power of attorney, as to which one is entitled to prosecute a matter pending before the Treasury Department or to receive a draft, warrant, or check, the client only shall thereafter be recognized, unless the members or survivors of the dissolved firm, or the contesting attorneys or agents, file an agreement signed by all designating which of them shall be entitled to prosecute such matter or to receive the said draft, warrant, or check. In no case shall the delivery of a final draft, warrant, or check to the client be delayed more than 60 days by reason of failure to file such agreement.

(c) *Revocation of powers.* The revocation of an authority to represent a claimant before the Treasury Department shall in no case become effective, so far as the Department is concerned, until due notice in writing has been given the head of the bureau, office, or division before which such matter is pending, and the filing of evidence of notification of the revocation to the attorney whose power has been revoked.

§ 10.10 *Disreputable conduct.* (a) The Secretary of the Treasury may after due notice and opportunity for hearing suspend, and disbar from further practice before the Treasury Department any attorney or agent shown to be incompetent, disreputable, or who refuses to comply with the rules and regulations in this part, or who shall with intent to defraud, in any manner wilfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement.

(b) Among other forms of disreputable conduct the following are deemed to constitute such conduct:

(1) Conviction of a crime involving moral turpitude.

(2) Making false answers in the application for enrollment with knowledge that such answers are false.

(3) Preparing or filing for himself or another a false Federal income tax return or other statement on which Federal taxes may be based, knowing the same to be false.

(4) Suggesting to a client or a prospective client an illegal plan for evading payment of Federal taxes, knowing the same to be illegal.

(5) Giving false testimony in any proceeding before the Committee on Practice, or in any other proceeding before the Treasury Department, or before any tribunal authorized to pass upon Federal tax matters, knowing the same to be false.

(6) Filing any false or fraudulently altered document or affidavit in any case or other proceeding before the Treasury Department, or procuring the filing thereof, knowing the same to be false or fraudulently altered.

(7) Using, with intent to deceive, false or misleading representations to procure employment in any case or proceeding before the Treasury Department.

(8) Giving, with intent to deceive, false or misleading information relative to a matter pending before the Treasury Department to any officer or agent of the Department.

(9) Preparing a false financial statement for a corporation, partnership, association, or individual, or certifying the correctness of such false statement, knowing the same to be false.

(10) Imparting to a client false information relative to the progress of a case or other proceeding before the Treasury Department, knowing the same to be false.

(11) False representations by an enrolled agent that he is an attorney or a certified public accountant.

(12) Preparing or assisting in the preparation of, or filing, a false claim against the United States, knowing the same to be false.

(13) Approving, for filing, a false income tax return prepared by some other person, knowing the same to be false.

(14) Misappropriation of sums received from clients for the purpose of payment of taxes or other obligations due the Government, or of funds or other property belonging to a client.

(15) Improper retention of a fee for which no services have been rendered.

(16) Obtaining or attempting to obtain money or other thing of value from a

claimant by false representations, knowing the same to be false.

(17) Obtaining or attempting to obtain money or other thing of value from a claimant by duress or undue influence.

(18) Concealing or attempting to conceal assets in order to evade the payment of Federal taxes.

(19) Representing to a client or prospective client that the attorney or agent can obtain extraordinary favors from the Treasury Department or an officer or employee thereof or has access to unusual sources of information within the Department.

(20) Soliciting or procuring the giving of false testimony in any proceeding before the Committee on Practice or in any other proceeding before the Treasury Department.

§ 10.11 *Striking names from roll.*

(a) On request of an attorney or agent, the Committee may strike his name from the roll, but before granting the request the Committee shall make inquiries to ascertain whether the request has been made in order to evade proceedings for suspension or disbarment, in which event the request shall be denied unless the Committee shall deem it to the best interest of all parties concerned to grant such request.

(b) The Committee may upon motion of the attorney for the Government or upon its own motion strike from the roll the name of any person who has failed to supply the information required by section 15 of Department Circular 230, revised October 1, 1934, provided that any attorney or agent whose name has been so stricken from the roll may have his name restored thereto by filing with the Committee such information and a statement showing that his failure to supply it within the time specified in such circular was not due to any fault on his part. Upon the receipt of such information and statement, the name of such attorney or agent shall be restored to the roll unless it shall appear that he is ineligible for enrollment, in which event he shall be advised of the fact and given 60 days within which to present to the Committee satisfactory evidence that he is eligible for enrollment.

§ 10.12 *Application and effective date of regulations.* The regulations in this part supersede the regulations promulgated by Treasury Department Circular No. 230 of October 1, 1934, relating to

the recognition of attorneys, agents, and others, as heretofore amended and supplemented. This part shall apply to attorneys, agents, and licensed custom-house brokers representing claimants before any office of the Treasury Department, with such exceptions as to custom-house brokers as are set forth in § 10.5, and shall be effective from and after October 1, 1936. The regulations in this part shall also apply to all unsettled matters then pending in this Department or which may hereafter be presented or referred to the Department or offices thereof for adjudication, and shall be applicable to all those now enrolled to practice before the Treasury Department as attorney or agent, and all proceedings within the purview of section 3 of the act of July 7, 1884, 23 Stat. 258 (5 U. S. C. 261) after October 1, 1936, shall in all procedural matters be governed by the provisions of the regulations in this part and such supplementary rules as may from time to time be adopted pursuant to said regulations: *Provided*, That violations of the regulations committed prior to October 1, 1936, shall in all substantive matters be dealt with according to the provisions of the regulations in force at the time when the act or acts alleged to constitute such violations occurred.

§ 10.13 *Withdrawal or amendment of regulations.* The Secretary of the Treasury reserves the power to withdraw or amend or supplement at any time or from time to time all or any of the regulations in this part, and may make such special orders as he may deem proper in any case.

PART 12—STANDARDS AND PROCEDURES FOR THE SPECIAL ENROLLMENT OF FORMER TREASURY OFFICERS AND EMPLOYEES

The Committee on Practice, pursuant to the provisions of § 10.3 (j) of this subtitle, relating to special enrollment, has adopted the following standards and procedures which will govern the enrollment of former officers and employees upon a noncompetitive basis by reason of their education, training, and experience in the Treasury Department:

§ 12.1 *Standards and procedures adopted by the Committee on Practice.* Former employees of the Treasury Department, upon application for special enrollment for the presentation of a particular class of matters or of matters

before a particular bureau, unit, or other division of the Department, may be specially enrolled by the Committee on Practice under § 10.3 (j) of this subtitle, in cases where their service in the Department has qualified them for such enrollment, as follows:

(a) Application for special enrollment on account of former service in the Treasury Department shall be made to the Committee on Practice. Each applicant will be supplied a form by the Committee, which shall indicate the information required respecting the applicant's qualifications. In addition to the applicant's name, address, citizenship, age, educational experience, etc., such information shall specifically include a detailed account of the applicant's employment in the Treasury Department, which account shall show (1) positions held, (2) date of each appointment and termination thereof, (3) nature of services rendered in each position, and (4) name of supervisor in such positions, together with such other information regarding the experience and training of the applicant as may be relevant.

(b) Upon receipt of each such application, it shall be transmitted to the appropriate officer of the Treasury Department with the request that a detailed report of the nature and rating of the applicant's services in the Treasury Department, accompanied by the recommendation of the superior officer in the particular bureau or division of the Treasury that such employment does or does not qualify the applicant for the desired authorization, be furnished to the Committee on Practice. (Such report shall be requested in addition to the usual reports requested in cases of application for enrollment.)

(c) In examining the qualifications of an applicant for special enrollment on account of Treasury service, the Committee will be governed by the following policies:

(1) Special enrollment cards will be issued for the presentation of matters only of the particular class or only before the particular bureau, unit, or division of the Treasury Department for which his former Treasury service has qualified the applicant.

(2) In the case of employees separated from employment in the Treasury Department, application for special enroll-

ment on account of such employment must be made within 2 years after the termination thereof: *Provided*, That, in the case of employees separated from employment in the Treasury Department after May 24, 1939, and prior to January 1, 1951, the Committee on Practice will consider applications presented to the Committee on or before December 31, 1952, for special enrollment on account of former service in the Treasury Department.

(3) In the case of applicants who have been employed in the Civil Service, a minimum of 7 years continuous employment in the Treasury Department shall be requisite for Special Enrollment on account of Treasury service, except, however, that 7 years continuous employment shall not be requisite in the case of any applicant who has held in the Bureau of Internal Revenue the office of Commissioner, Assistant Commissioner, Deputy Commissioner, Collector, Head of the Technical Staff, Chief of the Intelligence Unit, Internal Revenue Agent in Charge, Special Agent in Charge, or Head of a Technical Staff Division.

(4) For the purposes of subparagraph (3), an aggregate of 10 or more years of employment, at least three of which occurred within the 5 years preceding the date of application, shall be deemed the equivalent of 7 years continuous employment.

(Sec. 3, 23 Stat. 258; 5 U. S. C. 261.)

PART 13—PROCEDURES OF THE COMMITTEE ON PRACTICE—AVAILABILITY OF RECORDS

Sec.

13.1 Procedures.

13.2 Official records.

13.3 Information, requests, and submittals.

AUTHORITY: §§ 13.1 to 13.3 issued under R. S. 161; 5 U. S. C. 22.

SOURCE: §§ 13.1 to 13.3 appear at 11 F. R. 177A-87, as amended at 11 F. R. 12045; 13 F. R. 8276; 14 F. R. 78; 14 F. R. 3678; and 15 F. R. 6548.

§ 13.1 *Procedures.* (a) Licensing to practice before the Treasury Department is subject to this procedure:

(1) An applicant is required to file with the Committee on Practice an application on the form prescribed by section 10.4 of Treasury Department Circular No. 230, Revised [§ 10.4 of this sub-

title]. The application form calls for these items of information regarding the applicant: identification, description and location of his practice, qualifications, references, etc. Copies of the form may be procured from the Committee on Practice.

(2) Upon receipt of the application, the Committee on Practice grants a temporary license, provided the application is regular on its face; provided the averments of fact made therein, if true, would warrant issuance of a license; provided nothing of record before the Committee on Practice indicates the averments to be untrue; and provided there is nothing before the Committee on Practice to indicate that the applicant has not a good character.

(3) If a temporary license is not granted, the Committee on Practice accords the applicant an opportunity by correspondence or conference to correct any deficiency in the application.

(4) Upon the granting of a temporary license the Committee on Practice refers the application to the Intelligence Unit of the Bureau of Internal Revenue, Treasury Department, for investigation as to the truth of the averments made in the application and as to the character of the applicant.

(5) Upon completion of investigation, the Intelligence Unit sends the resultant report to the Committee on Practice for consideration.

(6) If the application and the investigative report are favorable to the applicant, the Committee on Practice recommends to the Secretary of the Treasury that the temporary license be replaced with a permanent license, replacement normally being accomplished in due course without the necessity of special request or petition on the part of the applicant.

(7) If the application and investigative report are not favorable to the applicant, the Committee on Practice by letter notifies the applicant of the apparent deficiencies and accords the applicant opportunity to show cause why a permanent license should be granted, the nature of the opportunity being determined by the character of the questions presented by the deficiencies.

(8) A controverted question is not determined adversely to the applicant by the Committee on Practice without according the applicant the opportunity for a hearing.

(9) Upon determination by the Committee on Practice that an application

should be denied, the Committee on Practice so recommends to the Secretary of the Treasury, who thereupon affirms, overrules, or remands the recommendation.

(b) Licensing (*i. e.*, the granting of the consent of the Secretary of the Treasury to) former personnel of the Treasury Department to act as attorney or agent (or as employee of an attorney or agent) within two years after the termination of the employment by the Treasury Department is subject to the procedure described in section 10.2 (a) (2) of Treasury Department Circular No. 230, Revised [§ 10.2 (a) (2) of this subtitle]. The application form prescribed by section 10.2 (a) (2) of the circular calls for the items of information specified in that section. Copies of the form may be procured from the Committee on Practice.

(c) Proceedings for suspension, disbarment, and reinstatement of licensees to practice before the Treasury Department are subject to the procedure described in section 10.7 of Treasury Department Circular No. 230, Revised [§ 10.7 of this subtitle].

(d) Licensing to be a customhouse broker is subject to the procedure described in sections 3 and 4 of Treasury Department Circular No. 559 [§§ 11.3 and 11.4 of this subtitle]. The application form prescribed by section 3 (a) of the circular calls for these items of information regarding the applicant: identification, description and location of his business, qualifications, references, etc. Copies of the form may be procured from the Committee on Practice and from the offices of Collectors of Customs.

(e) Proceedings for revocation and suspension of customhouse brokers' licenses are subject to the procedure described in sections 10, 11 and 13 of Treasury Department Circular No. 559 [§§ 11.10, 11.11, and 11.13 of this subtitle].

13.2 *Official records.* (a) There are made available to public inspection at the office of the Committee on Practice:

(1) The roster of all persons admitted to practice before the Treasury Department pursuant to the Act of July 7, 1884, 23 Stat. 258 (5 U. S. C. 261).

(2) The roster of all persons, licensed as customhouse brokers pursuant to amended section 641 of the Tariff Act of 1930, 46 Stat. 759 (19 U. S. C. 1641).

(3) The final opinion or order in the adjudication of any case in which there was sought revocation of any license of the character indicated in paragraph (a) (1) and (2) of this section, provided the licensee (or former licensee) expressly consents to publication.

(b) Matters of official record pertaining to the enrollment of persons to practice before the Treasury Department and pertaining to the licensing of customhouse brokers are available at the office of the Committee on Practice to persons properly and directly concerned.

(c) The official records pertaining to the revocation (or the proposed revocation) of licenses of the character indicated in paragraphs (a) (1) and (2) of this section, and to the investigation of applicants therefor, constitute confidential information, except as provided in paragraphs (a) and (b) of this section. These records are held confidential for these good causes:

(1) Publication is capable of injuring licensees and former licensees without furthering the public interest.

(2) Much of the information is elicited without the aid of the subpoena power on the assurance that the sources will be protected.

§ 13.3 *Information, requests, and submittals.* The public may secure information from, or make submittals or requests to, the Committee on Practice, Treasury Department, Washington, D. C., by personal appearance, by telephone, or by written communication.

STATUTES

Section 3 of the Act of July 7, 1884, 23 Stat. 258; 5 U. S. C. 261:

"That the Secretary of the Treasury may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. And such Secretary may after due notice and opportunity for hearing suspend, and disbar from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant, by word, circular, letter, or by advertisement."

Amended section 1 of the Act of June 25, 1948, 62 Stat. 697; 18 U. S. C. 281:

SEC. 281. COMPENSATION TO MEMBERS OF CONGRESS, OFFICERS AND OTHERS IN MATTERS AFFECTING THE GOVERNMENT.

"Whoever, being a Member of or Delegate to Congress, or a Resident Commissioner, either before or after he has qualified, or the head of a department, or other officer or employee of the United States or any department or agency thereof, directly or indirectly receives or agrees to receive, any compensation for any services rendered or to be rendered, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter in which the United States is a party or directly or indirectly interested, before any de-

partment, agency, court martial, officer, or any civil, military, or naval commission, shall be fined not more than \$10,000 or imprisoned not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

"Retired officers of the armed forces of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section. Nothing herein shall be construed to allow any retired officer to represent any person in the sale of anything to the Government through the department in whose service he holds a retired status.

"This section shall not apply to any person because of his membership in the National Guard of the District of Columbia nor to any person specially excepted by Act of Congress."

Amended section 1 of the Act of June 25, 1948, 62 Stat. 697; 18 U. S. C. 283:

"SEC. 283. OFFICERS OR EMPLOYEES INTERESTED IN CLAIMS AGAINST THE GOVERNMENT.

"Whoever, being an officer or employee of the United States or any department or agency thereof, or of the Senate or House of Representatives, acts as an agent or attorney for prosecuting any claim against the United States, or aids or assists in the prosecution or support of any such claim otherwise than in the proper discharge of his official duties, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, shall be fined not more than \$10,000 or imprisoned not more than one year, or both.

"Retired officers of the armed forces of the United States, while not on active duty, shall not by reason of their status as such be subject to the provisions of this section. Nothing herein shall be construed to allow any such retired offi-

cer within two years next after his retirement to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving the department in whose service he holds a retired status, or to allow any such retired officer to act as agent or attorney for prosecuting or assisting in the prosecution of any claim against the United States involving any subject matter with which he was directly connected while he was in an active-duty status.

"This section shall not apply to any person because of his membership in the National Guard of the District of Columbia nor to any person specially excepted by enactment of Congress."

Amended section 1 of the Act of June 25, 1948, 62 Stat. 698; 18 U. S. C. 284:

"SEC. 284. DISQUALIFICATIONS OF FORMER OFFICERS AND EMPLOYEES IN MATTERS CONNECTED WITH FORMER DUTIES.

"Whoever, having been employed in any agency of the United States, including commissioned officers assigned to duty in such agency, within two years after the time when such employment or service has ceased, prosecutes or acts as counsel, attorney, or agent for prosecuting any claims against the United States involving any subject matter directly connected with which such person was so employed or performed duty, shall be fined not more than \$10,000 or imprisoned not more than one year, or both."

Section 190 of the Revised Statutes; 5 U. S. C. 99:

"It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employee in any of the departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said departments while he was, such officer, clerk, or employee, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employee."

Section 3478 of the Revised Statutes; 31 U. S. C. 204:

"Any person prosecuting claims, either as attorney or on his own account,

before any of the departments or bureaus of the United States, shall be required to take the oath of allegiance, and to support the Constitution of the United States, as required of persons in the civil service."

Sections 5, 7, 8 and 9 of the Administrative Procedure Act, 60 Stat. 239, 241, 242, 242; 5 U. S. C. 1004, 1006, 1007 and 1008:

"ADJUDICATION

"SEC. 5. In every case of adjudication required by statute to be determined on the record after opportunity for an agency hearing, except to the extent that there is involved (1) any matter subject to a subsequent trial of the law and the facts de novo in any court; (2) the selection or tenure of an officer or employee of the United States other than examiners appointed pursuant to section 11; (3) proceedings in which decisions rest solely on inspections, tests, or election; (4) the conduct of military, naval, or foreign affairs functions; (5) cases in which an agency is acting as an agent for a court; and (6) the certification of employee representatives—

"(a) NOTICE.—Persons entitled to notice of an agency hearing shall be timely informed of (1) the time, place, and nature thereof; (2) the legal authority and jurisdiction under which the hearing is to be held; and (3) the matters of fact and law asserted. In instances in which private persons are the moving parties, other parties to the proceeding shall give prompt notice of issues controverted in fact or law; and in other instances agencies may by rule require responsive pleading. In fixing the times and places for hearings, due regard shall be had for the convenience and necessity of the parties or their representatives.

"(b) PROCEDURE.—The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permit, and (2) to the extent that the parties are unable so to determine any controversy by consent, hearing, and decision upon notice and in conformity with sections 7 and 8.

"(c) SEPARATION OF FUNCTIONS.—The same officers who preside at the reception of evidence pursuant to section 7 shall make the recommended decision or initial decision required by section 8 except

where such officers become unavailable to the agency. Save to the extent required for the disposition of ex parte matters as authorized by law, no such officer shall consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate; nor shall such officer be responsible to or subject to the supervision or direction of any officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency. No officer, employee, or agent engaged in the performance of investigative or prosecuting functions for any agency in any case shall, in that or a factually related case, participate or advise in the decision, recommended decision, or agency review pursuant to section 8 except as witness or counsel in public proceedings. This subsection shall not apply in determining applications for initial licenses or to proceedings involving the validity or application of rates, facilities, or practices of public utilities or carriers; nor shall it be applicable in any manner to the agency or any member or members of the body comprising the agency.

"(d) **DECLARATORY ORDERS.**—The agency is authorized in its sound discretion, with like effect as in the case of other orders, to issue a declaratory order to terminate a controversy or remove uncertainty.

"HEARINGS

"SEC. 7. In hearings which section 4 or 5 requires to be conducted pursuant to this section—

"(a) **PRESIDING OFFICERS.**—There shall preside at the taking of evidence (1) the agency, (2) one or more members of the body which comprises the agency, or (3) one or more examiners appointed as provided in this Act; but nothing in this Act shall be deemed to supersede the conduct of specified classes of proceedings in whole or part by or before boards or other officers specially provided for by or designated pursuant to statute. The functions of all presiding officers and of officers participating in decisions in conformity with section 8 shall be conducted in an impartial manner. Any such officer may at any time withdraw if he deems himself disqualified; and, upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a

part of the record and decision in the case.

"(b) **HEARING POWERS.**—Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take any other action authorized by agency rule consistent with this Act.

"(c) **EVIDENCE.**—Except as statutes otherwise provide, the proponent of a rule or order shall have the burden of proof. Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. Every party shall have the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses any agency may, where the interest of any party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

"(d) **RECORD.**—The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision in accordance with section 8 and, upon payment of lawfully prescribed costs, shall be made available to the parties. Where any agency decision rests on official notice of a material fact not appearing in the evidence in the record, any party shall on timely request be afforded an opportunity to show the contrary.

"DECISIONS

"Sec. 8. In cases in which a hearing is required to be conducted in conformity with section 7—

"(a) ACTION BY SUBORDINATES.—In cases in which the agency has not presided at the reception of the evidence, the officer who presided (or, in cases not subject to subsection (c) of section 5, any other officer or officers qualified to preside at hearings pursuant to section 7) shall initially decide the case or the agency shall require (in the specific cases or by general rule) the entire record to be certified to it for initial decision. Whenever such officers make the initial decision and in the absence of either an appeal to the agency or review upon motion of the agency within time provided by rule, such decision shall without further proceedings then become the decision of the agency. On appeal from or review of the initial decisions of such officers the agency shall, except as it may limit the issues upon notice or by rule, have all the powers which it would have in making the initial decision. Whenever the agency makes the initial decision without having presided at the reception of the evidence, such officers shall first recommend a decision except that in rule making or determining applications for initial licenses (1) in lieu thereof the agency may issue a tentative decision or any of its responsible officers may recommend a decision or (2) any such procedure may be omitted in any case in which the agency finds upon the record that due and timely execution of its functions imperatively and unavoidably so requires.

"(b) SUBMITTALS AND DECISIONS.—Prior to each recommended, initial, or tentative decision, or decision upon agency review of the decision of subordinate officers the parties shall be afforded a reasonable opportunity to submit for the consideration of the officers participating in such decisions (1) proposed findings and conclusions, or (2) exceptions to the decisions or recommended decisions of subordinate officers or to tentative agency decisions, and (3) supporting

reasons for such exceptions or proposed findings or conclusions. The record shall show the ruling upon each such finding, conclusion, or exception presented. All decisions (including initial, recommended, or tentative decisions) shall become a part of the record and include a statement of (1) findings and conclusions, as well as the reasons or basis therefor, upon all the material issues of fact, law, or discretion presented on the record; and (2) the appropriate rule, order, sanction, relief, or denial thereof.

"SANCTIONS AND POWERS

"Sec. 9. In the exercise of any power or authority—

"(a) IN GENERAL.—No sanction shall be imposed or substantive rule or order be issued except within jurisdiction delegated to the agency and as authorized by law.

"(b) LICENSES.—In any case in which application is made for a license required by law the agency, with due regard to the rights or privileges of all the interested parties or adversely affected persons and with reasonable dispatch, shall set and complete any proceedings required to be conducted pursuant to sections 7 and 8 of this Act or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, no withdrawal, suspension, revocation, or annulment of any license shall be lawful unless, prior to the institution of agency proceedings therefor, facts or conduct which may warrant such action shall have been called to the attention of the licensee by the agency in writing and the licensee shall have been accorded opportunity to demonstrate or achieve compliance with all lawful requirements. In any case in which the licensee has, in accordance with agency rules, made timely and sufficient application for a renewal or a new license, no license with reference to any activity of a continuing nature shall expire until such application shall have been finally determined by the agency."